IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2006

Coram

The Honourable Mr. JUSTICE R.BALASUBRAMANIAN
The Honourable Mr. JUSTICE K.MOHAN RAM
AND
The Honourable Mr. JUSTICE V.DHANAPALAN

L.P.A. No.100 of 1999 and
C.M.P.No.8470 of 1999

B.Suresh Chand .... Appellant/2nd respondent/2nd Plaintiff

-Vs.-

1. State of Tamil Nadu
   Rep. by the Secretary
   Revenue Department
   Fort St. George,
   Madras - 9.

2. The Deputy Commercial Tax Officer
   Thirupattur, North Arcot District. ....
   Respondents/Appellants Defendants

APPEAL under clause 15 of the Letters Patent. against the order of the Honourable Mr. Justice P. Sathasivam dated 28.11.1997 and made in the exercise of the Appellate jurisdiction of the High Court in AS NO. 613/84 (OS NO. 259/1978 Sub Court, Thiruppathur)

For Appellant : Mr. V.Raghavachary
For Respondents : Mr. Srikanth, Spl. G.P., for R-1.
Mr. R.Subbiah, for R-2.

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J U D G E M E N T

(Judgement of the Court was delivered by
Justice K.Mohan Ram)

The above Letters Patent Appeal No.100 of 1999 is before us on a reference order dated 19.12.2002 made by a Division Bench consisting of two Learned Judges of this Court. The question referred to the Full Bench for answer is as here-under:-

> "What is the extent a bonafide purchaser for value is bound by the charge for payment of arrears of sales Tax created under Section 24 of the Tamil Nadu General Sales Tax Act, 1959.

Before the Division Bench, the learned counsel for the appellant relied upon a decision of the Division Bench of this Court rendered in the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs. R.K.Steels reported

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in 1998 (1) C.T.C. 124 = 108 S.T.C. 161, to contend that the appellant is a bonafide purchaser without notice of charge under Section 24(1) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") and therefore the property purchased by him under a registered sale deed dated 25.09.1977 from the vendors' who were tax defaulters under the Act cannot be proceeded against for the recovery of sales tax arrears.

2. However, the Revenue relied upon the decision of this Court rendered by two Division Benches in the case of Coramandel Indag Products India Limited Vs. Commercial Tax Officer and others reported in 1993 (3) M.T.C.R. 81 and in the case of Deputy Commercial Tax Officer Vs. Azha Kumari reported in 1985 W.L.R. 240. Having regard to the submissions made by the learned counsel on either side, the Division Bench reasoned as here-under and requested the Honourable Chief Justice to constitute a larger Bench. The reasons given by the Division Bench in making the reference is extracted as here-under:-

> "All these cases dealt with the question as to whether the charge created under the Sales Tax is binding on the bonafide purchaser for value. While in the first case it was held it does not, in the other two cases it was held that it does. The division Bench which decided the Asha Kumari's case and the one that dealt with the case of R.K.Steels referred to the decision of the Supreme Court in the case of Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdul Gaful Haji Hussenbhai, (A.I.R. 1971 S.C. 1201), but, read the judgement of the Supreme Court differently. The Division Bench which decided the case of R.K.Steels found fault with the division Bench which decided the case of Asha Kumari and held that it had erroneously distinguished the ratio laid down by the Supreme Court in the case of Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdul Gaful Haji Hussenbhai, (A.I.R. 1971 S.C. 1201). Judicial proprietory requires that if there is a disagreement among the two Division Benches it should be resolved, by a larger Bench. It would have been proper if the Division Bench which decided the case of R.K.Steels had itself referred the matter to a larger Bench instead of following the course that it did. It has been held by the Supreme Court in more than one case that the Co-ordinate Benches are bound by the decision of other Co-ordinate Benches and in case of disagreement the proper course is to refer the matter to a larger Bench.
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> 3. We, therefore, refer this case for decision by a larger Bench having regard to the conflicting views expressed by two different Division Benches of this Court with regard to the extent a bonafide purchaser for value is bound by the charge for

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payment of arrears of sales tax created under Section 24 of the Tamil Nadu General Sales Tax."

3. The scope of the reference, in our considered view, is not only that we have to decide the question of law, but also the question as to whether the appellant is a bonafide purchaser without notice of the charge under Section 24(1) of the Act and as such whether his property cannot be proceeded against for the recovery of sales tax arrears. To decide that the entire factual matrix of the case has to be set out and the facts are as follows:-

'For the sake of convenience, the parties are referred to as per their ranking in the suit'. The case of the plaintiffs is as follows:-

(i) The plaintiffs purchased the suit property on 25.09.1977 and are in possession of the same as absolute owners. The second defendant, Deputy Commercial Tax Officer, Thirupathur, alleging that one T.P.Narayanasamy and his son T.N.Subash are defaulters in the payment of sales tax, issued a notice on 28.10.1977 to the plaintiffs calling upon them to pay tax arrears of a sum of Rs.1,01,879.67. The plaintiffs filed a claim application before the second defendant denying their liability. The second defendant issued an order to the plaintiffs on 11.09.1978 stating that the sale by the defaulters is not binding on the department and negativing the claim of the plaintiffs. The plaintiffs are bonafide purchasers for value without notice on any manner of claim by anyone against the same. The plaintiffs have discharged the earlier debts of the transferors which were prior in point of time over the claim of the department. The claim of the department can only be against the defaulters and their property. T.N.Subash has no right or interest in the property sold to the plaintiffs. The plaintiffs after issuing notice under Section 80 of the Code of Civil Procedure (hereinafter referred to as "the C.P.C.") have filed the suit in O.S.No.254 of 1978 before the Sub-Court, Thirupathur, to set-aside the order of the second defendant dated 11.09.1978 and to raise the attachment on the schedule mentioned property and for injunction.

4. The defendants filed a written statement contending that one T.P.Narayanasamy and his son T.N.Subash were the partners of the firm M/s. Kasthuri and Company, Jinnah Road, Thirupathur, carrying on business in sewing machines, motor cycles and spare parts. For the year 1974-75, the said firm was assessed to sales tax of Rs.1,389.15. The order was served on 17.02.1976. The tax was payable on or before 18.03.1976. Hence the said firm became defaulters on 18.03.1976. For the year 1975-76 the said firm was assessed to sales tax of Rs.3,862.67. The order of assessment was passed on 31.01.1977. The firm and its partners became defaulters on 02.03.1977. The said T.P.Narayanasamy and T.N.Subash were partners of another firm by name S.V.Traders, Kancheepuram. For the year 1973-74, the firm S.V.Traders was assessed to sales tax of Rs.11,867/-. It was assessed to another sales tax of Rs.8,983/-. The order was served on 07.08.1974. For the year 1974-75, the firm was assessed to sales tax of Rs.69,846/-. The

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order was served on 26.11.1976. For the year 1975-76, the firm

was assessed to sales tax of Rs.5,482/-. The order was served on 05.12.1976. The said firm and its partners became defaulters for the said three years. The commercial Tax Officer, Chengalpet sent a requisition to the second defendant on 21.03.1977 to institute proceedings for the recovery of the sales tax arrears of Rs.96,187/- due by S.V.Traders, Kancheepuram.

5. It is further contended that under Section 24 of the Act if default is made the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the persons liable to pay the tax. The defaulters are also liable to pay penalty. The second defendant initiated proceedings under the Tamilnadu Revenue Recovery Act. The suit house was attached and brought to sale after service of demand notice on the defaulters as required under the Act. The demand notice in Form-I dated 30.07.1977 has been served on the defaulter T.N.Subash on 04.08.1977. After the receipt of the demand notice the defaulters have executed a sale deed in respect of the said properties in favour of the plaintiffs in order to defraud the defendants. The sale is not binding on the defendants. A copy of the notice dated 22.07.1978 was sent to the plaintiffs. The plaintiffs are not personally liable but the property purchased by them is subject to charge and is liable for the said arrears. The S.V.Traders has been assessed to Sales tax of Rs.5,793/- for 1976-77. The order of assessment was served on 07.04.1978. The said T.N.Subash on behalf of S.V.Traders in his letter dated 22.09.1977 addressed to the Secretary, Revenue Department, Government of Tamilnadu had admitted the arrears of sales tax and requested to pay the amount in instalments. The plaintiffs filed the claim petition on 11.09.1978 before the second defendant, who had in his reply intimated about the charge over the suit property and the arrears of sales tax by the transferors. The plaintiffs are not bonafide purchasers for value without notice of the defect in title. The plaintiffs were aware of the arrears of sales tax. The plaintiffs and the defaulters are close friends. The sale deed has been created collusively to defeat and delay the realisation of the sales tax arrears. The defendant does not admit that any consideration was paid towards the sale deed. The order of attachment was issued by way of abundant caution. The plaintiffs have not discharged any alleged earlier debts of transferors.

6. The trial court framed the following issues:-

(i) Whether the sale deed in favour of the plaintiffs is true, valid and binding on the defendant?

(ii) Whether charge had been created by operation of law over the suit properties prior to said sale?

(iii) Whether the defendants are not entitled to proceed against the suit properties for recovery of sales tax arrears due by M/s. T.P.Narayanasamy and his son T.N.Subash?

(iv) Whether there was no valid notice under Section 80 C.P.C?

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(v) Whether the valuation of suit and court fee paid are not correct?

(vi) Are the defendants estopped from claiming charge?

(vii) Whether the suit properties are liable for the claim of defendants against M/s. S.V.Traders, Kancheepuram?

(viii) To what relief, if any, are the parties entitled to?

7. During trial on the side of the plaintiffs, the second plaintiff was examined as P.W.1 and 14 other witnesses were examined as P.Ws.2 to 15 and Exs.A-1 to A-46 were marked in support of their claim. On the side of the defendants, D.Ws.1 to 8 were examined and Exs.B-1 to B-36 were marked in support of their defence.

8. The Learned Subordinate Judge on a consideration of the oral and documentary evidence adduced, decreed the suit with costs as prayed for. Being aggrieved by the judgement and decree passed by the learned Subordinate Judge, the unsuccessful defendants filed A.S.No.613 of 1984 before this Court. A Learned Single Judge on a careful consideration of the evidence on record, the reasonings of the learned Sub-ordinate Judge by a detailed judgement, set-aside the judgement and decree and allowed the appeal by judgement and decree dated 28.11.1997. Aggrieved by that the second plaintiff has filed the above Letters Patent Appeal.

9. We heard Mr. V.Raghavachary learned counsel appearing for the appellant and Mr.Srikanth, Special Government Pleader appearing for the first respondent and Mr. R.Subbiah learned counsel appearing for the second respondent.

10. Mr.V.Raghavachary learned counsel for the appellant submitted that the learned Single Judge without properly considering the oral and documentary evidence adduced in the case and without considering the reasonings of the trial court has erroneously held that S.V.Traders is a partnership firm. The learned counsel submitted that in Ex.A-46 the department itself has referred S.V.Traders as only a proprietory concern and therefore the finding of the Learned Single Judge based on the representation of T.N.Subash to the Board of Revenue that S.V.Traders is a partnership firm is erroneous. The learned counsel further submitted that the assessment of the concern in the books of sales tax authorities is the determinative factor and not the character of the representation made by T.N.Subash to the Board of Revenue. The learned counsel further submitted that T.P.Narayanasamy has nothing to do with S.V.Traders which is a proprietory concern or his son T.N.Subash and the tax arrears of S.V.Traders has nothing to do with T.P.Narayanasamy. The learned counsel submitted that simply because T.N.Subash has joined with his father T.P.Narayanasamy in the execution of Ex.A-1 sale deed, it would not mean that they are the joint owners of the property. The learned counsel further submitted that the Learned Single Judge has failed to apply the law laid down in 1998 (1) C.T.C. 124

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(referred to supra) and submitted that the Learned Single Judge ought to have held that the plaintiffs were bonafide purchasers of the suit property without notice.

11. The learned counsel for the appellant submitted that Exs.B-1 and B-2- assessment orders and Exs.B-3 and B-4-demand notices coupled with the evidence of D.Ws.1 and 2 show that S.V.Traders was only a proprietory concern and the same was described as 'Thiru.S.V.Traders' and if really it was a partnership firm, it would have been described as 'Thiruvalargal.S.V.Traders' in Exs.B-1 to B-4. He further submitted that the trial court on consideration of the said documents and the deposition of D.Ws.1 to 8 has clearly recorded a finding that S.V.Traders was only a proprietory concern, whereas the said oral and documentary evidence has not been properly considered by the Learned Single Judge. He further submitted that the trial court on a consideration of Ex.B-21 has observed that for the first time S.V.Traders was referred to as Thiruvalargal.S.V.Traders, 502 Gandhi Road, Kancheepuram, in the letter dated 06.06.1978, whereas the plaintiffs had purchased the property on 25.09.1977 itself and in all the other documents, demand notices and assessment orders S.V.Traders, Kancheepuram was referred to as Thiru S.V.Traders. He further submitted that the trial court, on a consideration of Ex.B-26-Form-IX alleged to have been signed by T.N.Subash and T.P.Narayanasamy submitted by them to the sales tax authorities describing them as partners of M/s. S.V.Traders Kancheepuram, has held that there is no evidence to show that the signature in Ex.B-26 is that of T.P.Narayanasamy. The learned counsel further submitted that the trial court has observed that there is no proof that T.P.Narayanasamy himself signed in Ex.B-26 and the trial court on a comparision of the signatures in Exs.B-14 and B-26 has observed that the signatures differ, but the same have not been considered by the Learned Single Judge.

12. The learned counsel further submitted that the plaintiffs being bonafide purchasers without notice are not liable to pay the sales tax arrears of their vendors and the property cannot be attached and sold for the sales tax arrears of either S.V.Traders, Kancheepuram or Kasthuri and Company. According to the learned counsel, the learned Single Judge has not considered the issue whether the plaintiffs are bonafide purchasers without notice in the light of the law laid down by the Division Bench of this Court reported in 1998 (1) C.T.C. 124 (referred to supra).

13. Per contra Mr. R.Subbiah learned counsel for the second respondent submitted that the trial court has placed too much importance on trivialities and has not properly considered Exs.A-46, B-15, B-24, B-25, B-26, B-27 and B-36, whereas the Learned Single Judge has considered the said documents elaborately and has come to the right conclusion that S.V.Traders, Kancheepuram was not a proprietory concern as claimed by the plaintiffs, but it was only a partnership firm of which T.P.Narayanasamy and his son T.N.Subash were partners. The learned counsel drew our attention to the following observation made by the Tamilnadu Sales Tax Appellate Tribunal (Main Bench, Madras-1) in Ex.B-36, which reads

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as follows:-

> "These details and documentary evidence give support for the existence of the stated partnership".

14. The learned counsel further drew our attention to Ex.B-25 dated 01.07.1974 wherein in column-4 both the names of T.N.Subash and T.P.Narayanasamy have been specifically mentioned as sharers. The learned counsel further invited out attention to Ex.B-26 dated 01.12.1975 which is Form-IX, prescribed under Rule 40 of the Tamilnadu General Sales Tax Rules, 1959, wherein T.N.Subash and T.P.Narayanasamy have declared that they have entered into partnership in regard to the business known as M/s. S.V.Traders, Kancheepuram and the form has been signed both by T.N.Subash and T.P.Narayanasamy. The learned counsel submitted that the learned Single Judge has extracted relevant portions from Exs.A-46, B-25, B-26 and B-36 and discussed threadbare the contents thereof and has rightly come to the conclusion that S.V.Traders, Kancheepuram was a partnership concern consisting of T.N.Subash and T.P.Narayanasamy as partners. The said finding of the learned Single Judge being based on documentary evidence is unassailable. The learned counsel further submitted that the learned Single Judge has clearly observed that a perusal of the pleadings of both the parties as well as the evidence clearly shows that the plaintiffs were very well aware of the sales tax arrears from 1973-74 and knowing it fully well they have purchased the property from T.P.Narayanasamy. The learned counsel further submitted that the plaint does not contain proper pleadings containing the material facts in respect of their claim that they are bonafide purchasers without notice of the sales tax arrears of their vendors and in the absence of necessary pleadings they are precluded from letting in any evidence in that respect and further submitted that any amount of oral evidence in the absence of necessary pleadings cannot be looked into. He further submitted that since the plaintiffs pleaded that they were bonafide purchasers without notice the initial burden was on them to prove the said plea. According to the learned counsel, the plaintiffs have not discharged their burden and whereas the department by overwhelming documentary evidence has proved that the plaintiffs had knowledge about the sales tax arrears of their vendors. The learned counsel further submitted that Ex.A-46 which is an order dated 17.11.1975 passed by the Commissioner for Land Revenue and Commercial Taxes in a batch of revision petitions filed by the vendors of the plaintiffs, the Commissioner rejected the revision petitions filed by the plaintiffs' vendors challenging the assessment orders passed for the assessment year 1974-75 and when Ex.A-46 had been produced by the plaintiffs before the trial court, it is evident that they had knowledge about the sales tax arrears of M/s. S.V.Traders, Kancheepuram and therefore submitted that the plaintiffs cannot be construed to be bonafide purchasers without notice.

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15. By placing reliance on the following decisions, the learned counsel for the second respondent submitted that the defence of purchase without notice is one which ought to be specifically pleaded and proved by one who pleads so.

(i) A.I.R. 1928 Patna 587 (Murat Singh Vs. Pheku Singh)
(ii) A.I.R. 1939 Nagpur 132 (Mt. Renukabai W/o. Sitaramji Wankhade Vs. Bheosan Hapsaji Junghare and others).
(ii) A.I.R. 1940 Nagpur 163 (Seth Ghasiram Seth Dalchand Palliwal Vs. Mt. Kundanbai, W/o. Rameshwar Shukul and others).

16. The learned counsel for the second respondent further drew our attention to Exs.A-3 and A-7-the reply notice and notice sent by the plaintiffs respectively and submitted that the plaintiffs had not claimed either in Ex.A-3 or Ex.A-7 that they have no notice about the sales tax arrears of their vendors. He further invited our attention to the cross examination of P.W.1 wherein he had categorically stated that they did not enquire T.P.Narayanasamy as to whether there was sales tax arrears. P.W.1 has also stated in his cross examination that he had not enquired either T.P.Narayanasamy or T.N.Subash about S.V.Traders.

17. In reply Mr. V.Raghavachary learned counsel for the appellant submitted that the plaint contains the necessary pleadings and it can be inferred from the plaint that the plaintiffs have no notice about the sales tax arrears of their vendors and they are bonafide purchasers. The learned counsel submitted that there is no need to plead that the plaintiffs made enquires with their vendors regarding their sales tax arrears. The learned counsel relied upon the following decisions:

(i) 62 Law Weekly 377 (Adinarayana Vs. Jagannadha Rao).
(ii) A.I.R.1934 Privy Council 68 (Bhup Narain Singh Vs. Gokul Chand Mahton and others).
(iii) A.I.R. 1929 Patna 300 (Ramdeni Singh and another Vs. Gumani Raut and another).
(iv) A.I.R. 1977 Allahabad 328 (Ram Lakhan Vs. Ram Govind and others).
(v) A.I.R. 1984 Patna 277 (Rameshwar Singh Vs. Hari Narayan Singh and others).

18. The learned counsel on either side submitted that the Honourable Supreme court in the decision reported in 2006 (1) S.C.C. 615 (State of Karnataka and another Vs. Shreyas Papers (P) Ltd., and others) has approved the decision of the Division Bench of this Court reported in 1998 (1) C.T.C. 124 (referred to supra) equivalent to 108 S.T.C. 161 and therefore the law laid down in 1993 (3) M.T.C.R. 8 (referred to supra) and 1985 W.L.R. 240 (referred to supra) is no longer good law.

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19. Now we have to consider the above submissions of the learned counsel.

(i) In 1985 W.L.R. 240 (referred to supra) the Division Bench has laid down as follows:-

> "If the tax assessed remained unpaid for a period of 21 days after the notice of demand had been served, that charge can be enforced by invoking the provisions of the Revenue Recovery Act, under Section 24(2) of the Tamil Nadu General Sales Tax Act. Since the learned Judge has not considered the scope of S.24(1) but proceeded only on the basis of S.24(2) we are not inclined to agree with the view expressed by the learned Judge that arrears of sales tax cannot be recovered from the properties sold by the assessee after a charge has fastened itself on the properties of the defaulter, on his default in paying the arrears of sales tax within the time stipulated by S.24(1)."

(ii) In 1993 (3) M.T.C.R. 8 (referred to supra), the Division Bench after referring to the decision reported in 1985 W.L.R. 240 (referred to supra) has observed as follows:-

> "The Division Bench held that as a result of Sec. 24(1) of the Act, a charge was created over the properties for the sales tax amount due by the transferor even before the transfer was actually effected and the said charge can be enforced against the properties transferred which are in the hands of the transferee. The decision in Ahamedabad Municipality Vs. Haji Abdul (A.I.R. 1971 S.C.1201) relied on by the learned counsel for the appellant is not quite relevant, for, that decision was rendered with reference to Sec. 141 of the Bombay Provincial Municipal Corporation Act 1949. Sec. 141(1) of the Bombay Provincial Municipal Corporation Act 1949 merely creates a charge for the property tax. There is no provision in the Bombay Provincial Municipal Corporation Act, similar to Sec. 24(2) of Tamil Nadu General Sales Tax Act, 1959, providing for enforcement of the charge created under Sec. 141 (1) of the Bombay Provincial Municipal Corporation Act. Therefore, the ratio of the decision of the Supreme Court in Ahmedabad Municipality Vs. Haji Abdul (A.I.R. 1971 S.C. 1201) cannot be applied to the facts of the present case. We are inclined to follow the decision of the Division Bench of this Court in Deputy Commercial Tax Officer Vs. Azha Kumari (1985 W.L.R. 240) and hold that the charge created for arrears of sales tax over the properties of the defaulter under Sec. 24(1) of the Act can be enforced in the hands of the

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transferee by invoking the provisions of the

Revenue Recovery Act as provided in Sec. 24(2) of the Act".

(iii) In 1998 (1) C.T.C. 124 equivalent to 108 S.T.C. 161 (referred to supra), the Division Bench in paragraph 15 observed as follows:-

> "Having regard to the clear and categorical views expressed by the Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdul Gafur Haji Hussenbhai, A.I.R. 1971 S.C. 1201, we are not inclined to accept the two Division Bench judgements of this Court in Dy. Commercial Tax Officer's case, 1985 (14) STL 164 (Mad.) and Coramandel Indag Products India Ltd.'s case 1993 (3) M.T.C.R. 8, we would have normally referred the issue for decision by a Full Bench, but for the fact that the judgement of the Supreme Court is crystal clear. To repeat unless a provision is made in any statute contrary to the rule of Section 100 of the Transfer of Property Act, a bona fide purchaser for consideration without notice of the charge is protected. This proposition of law is too very clear and so categorically emphasised by the Supreme Court in Ahmedabad Municipal Corporation case, A.I.R.1971 S.C.1201. We therefore with respect differ from the views expressed by the two Division Bench judgements referred to above and propose to follow the judgement of the Supreme Court".

and ultimately held as follows:-

> " ... following the Supreme Court judgement in Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdul Gafur Hani Hussenbhai, A.I.R.1971 S.C.1201 that the respondent is a bona fide purchaser without notice of the charge under Section 24(2) of the Sales Tax Act and therefore, his property cannot be proceeded against for the recovery of sales tax arrears."

(iv) In 2006 (1) S.C.C. 615 (referred to supra), the Apex Court while considering the enforceability of the charge created under Section 13(2) (i) of the Karnataka Sales Tax Act 1957 observed as follows:-

> "19. While the expression "charge" is not defined by the KST Act, this concept is well known in property law and has been defined by Section 100 of the Transfer of Property Act, 1882 (hereinafter "the TP Act"). Here "charge" is defined as:
>
> > '100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the later person is said to have a charge on the property, and all the

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> provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.
> Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any properly in the hands of a person to whom such property has been transferred for consideration and without notice of the charge'.

20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she/he has has no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in Dattatreya Shanker Mote Vs. Anand Chintaman Datar and in Ahmedabad Municipal Corpn, of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai (hereinafter "Ahmedabad Municipal Corpn."). In this connection, we may refer to the latter judgement, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corpn. was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court-auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in the auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in

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Ahmedabad Municipal Corpn. has been correctly

applied in a sales tax case similar to the present case".

After laying down the law as aforesaid the Apex Court in the light of the facts of that case held as follows:-

> "23. In these circumstances, we are of the view that the first respondent was a purchaser for value without notice of the sales tax arrears of the defaulting company or the consequent charge on the property. This would therefore attract the principle laid down by this Court in Ahmedabad Municipal Corpn. which is also emboidied in the proviso to Section 100 of the TP Act. Thus, the property in the hands of the first respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the defaulting company in this manner against the first respondent".

Thus it is clear that the law laid down by the Division Bench in 108 S.T.C. 161 (referred to above) has been approved by the Apex Court.

20. Therefore we hold that in view of the Honourable Supreme Court's judgement approving the law laid down in 108 STC 161 (referred to above) by its decision reported in 2006 (1) S.C.C. 615 (referred to above) the law laid down by the Division Benches of this Court in the decisions reported in 1985 W.L.R. 240 (referred to supra) and 1993 (3) M.T.C.R. 8 (referred to supra) are no longer good law. We hold that the property purchased by a bonafide purchaser without notice of the charge under Section 24 (1) of the Act cannot be proceeded against for the recovery of sales tax arrears.

21. Now in the light of the law laid down in 2006 (1) S.C.C. 615 (referred to supra) we have to see, in the present case, whether the plaintiffs are bonafide purchasers of the suit property without notice.

22. To decide the said issue, it will be useful to refer to the relevant provisions of the Act and the Transfer of Property Act.

(i) Sections 19 and 24 of the Act read as follows:

> "19. Liability of firms. - (1) Where any firm is liable to pay any tax or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.
>
> (2) Where a partner of a firm liable to pay any tax or any amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax or other amount remaining unpaid at the time of his retirement and any tax or other amount due up to the date of retirement,

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though unassessed".

"24. Payment and recovery of tax. - (1) Save as otherwise provided for in sub-section (2) of Section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of Section 13 shall be paid without any notice of demand. In default of such payment the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.
(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under Section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered,

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him;
Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38."

(ii) With regard to the aspect of notice, the interpretation clause- Section 3 of the Transfer of Property Act 1882 reads as follows:-

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it".

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(iii) Section 100 of the Transfer of Property Act 1882 reads as follows:

"100. Charges - Where immovable property of one

person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained (which apply to a simple mortgage shall, so far as may be, apply to such charge).

Nothing in this Section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, (and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge)."

23. From a reading of the above said provisions the following conclusions emerge:

Under Section 19 of the Act when the firm is liable to pay tax under the Act, the firm and each of the partners of the firm shall be jointly and separately liable for payment of such tax. Under this Section, for the liability of the firm, the partners are also liable and therefore their properties cannot escape the tax liability. When such a person has effected transfer of his property after the assessment proceedings under the Act are completed it cannot be stated that he did not intend to evade the tax and as such the sale will not be binding on the department. But, at the same time, the legislature has intended to protect the honest person who had purchased the property from such a seller, if he had not colluded with the seller and he had no notice of the liability of the vendor. While sub-section(1) of Section 24 creates a 'charge' on the properties of a defaulter to the extent of his dues, sub-section (2) states that the dues will have priority over all other claims against those properties, except land revenue and claims of Land Development Bank in regard to property mortgaged to it.

24. The meaning of the term "charge on the property" is to be found in Section 100 of the Transfer of Property Act, in which it has been equated to a 'simple mortgage', and it has also been laid down therein that, in the absence of a specific provision in any law, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of a charge. Thus, while Section 24(1) of the Act gives the tax dues only the status of a simple mortgage over the properties of the defaulter, Section 24(2) gives these dues a priority over all other claims against that property except claims for land revenue and of Land Development Bank.

25. A reading of Section 3 of the Transfer of Property Act, 1882 leads to the conclusion that, not only a wilful abstention from an enquiry which a person ought to have made, but the gross negligence to make enquiry also would amount to notice of a fact to him. When the prudence of a person requires him to make an enquiry, but due to his own negligence he failed to make enquiry, he falls in the category of a person, with notice. A purchaser of

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the property who claims the transaction to be bona fide without

notice, the yardstick to be applied for the "notice" is given in Section 3 of the Transfer of Property Act, 1882 and only by the application of this provision, a purchaser who seeks protection is to be identified, whether he is a purchaser for value without notice. The necessity of the purchase, the intention of the transfer, the relationship between the vendee and vendor are all vital factors to find out the reasonableness of the person in purchasing the property. Sometimes unexplained secrecy or the haste in the transactions may also throw some light on the bona fides or mala fides. To decide whether a transaction was genuine or bona fide or mala fide, all facts relating to the conduct of the parties to the transaction have to be weighed as a whole.

26. The plaintiffs in this case have not disputed the liability of their vendors to pay the sales tax, even at the time of the sales, but claim protection under the exception clause, for which the parameters of Section 3 of the Transfer of Property Act 1882 have to be applied. Every purchaser from the assessee is naturally interested to protect the property and will claim to be a bonafide purchaser. For the sake of their claim, the Court cannot approve the transaction as a bonafide sale.

27. Under Section 101 of the Evidence Act, 1872 whoever desires any court to give judgement as to any legal right or liability depending on the existence of facts which he asserts, must prove, that those facts existed. Therefore, it is for him to establish that there was no wilful abstention of enquiry or search of the facts, on his part about the vendor before the sale transaction was completed.

28. In this context it will be useful to refer to Order 6 Rule 2 of C.P.C., which reads as follows:-

> "Order 6 Rule 2: Pleading to state material facts and not evidence. - (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved".

29. A reading of the above provisions show that the party must plead all material facts on which he means to rely at the trial. If any one of the material fact is omitted, the statement of claim is bad and it would mean no pleading and no cause of auction for the suit. If material facts are not pleaded, a court cannot permit evidence to be led. In 1977 (1) S.C.C. 511 (Udhav Singh Vs. Madhav Rao Scindia) the Supreme Court has defined the expression "material facts" in the following words:-

> "All the primary facts which must be proved at the trial by a party to establish the existence of a cause of auction or his defence are material facts".

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30. The distinction between "material facts" and "particulars" cannot be overlooked. Material facts are primary and basic facts which must be pleaded by the party in support of the case set up by him, either to establish his cause of auction or defence. Since the object and purpose is to enable the opposite party to know the case he has to meet, in absence of pleading a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit. Particulars, on the other hand, are the details of the case. They amplify, refine and embellish material facts. They give the finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative.

31. If in the light of the provisions contained in Order 6 Rule 2 (1) of C.P.C. the averments in the plaint are considered, it can easily be seen that all the primary facts which must be proved at the trial by the plaintiffs to establish their case that they are bonafide purchasers for value without notice have not been stated in the plaint. It is pertinent to point out at this juncture that nowhere in the plaint the plaintiffs pleaded that S.V.Traders, Kancheepuram was a proprietory concern and it was not a partnership firm. Likewise nowhere in the plaint it has been stated that the plaintiffs either enquired with their vendors or with the authorities of the sales tax department as to whether any sales tax arrears is due from their vendors.

32. In the written statement the defendants have put forth the following pleas, viz.,:

(i) Thiru.T.P.Narayanasamy and his son T.N.Subash were partners of another firm named S.V.Traders dealing business in moped scooters and spare parts at No.502, Gandhi Road, Kancheepuram. For the year 1973-74 the said firm was assessed to sales tax of Rs.11,876/- and AST of Rs.8,983/-. For the year 1974-75 the said firm was assessed to sales tax of Rs.69,846/- and for the year 1975-76 the said firm was assessed to sales tax of Rs.5,482/-. Due to failure to pay the said amounts, the said firm and its partners became defaulters on 05.09.1974, 24.12.1976 and 03.01.1977 for the said three years respectively.

(ii) The defendants have specifically pleaded that after receipt of the demand notice the defaulters namely the vendors of the plaintiffs have executed a sale deed in respect of the suit property in favour of the plaintiffs, in order to defraud the defendants and the sale deed is not binding on the defendants.

(iii) The plaintiffs are not bonafide purchasers for value without notice of the defects in title. The plaintiffs were aware of the said arrears of sales tax. The said Kundanlal Baffna is a close friend to the said defaulters. The sale deed has been created collusively between the plaintiffs and the said defaulters to defraud the defendants and to defeat and delay the realisation

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of sales tax arrears.

But the plaintiffs have not chosen to deny the said pleadings in the written statement by filing a reply statement.

33. At this juncture we should point out that neither in Ex.A-3-reply notice sent by the plaintiffs through their counsel nor in Ex.A-7-legal notice issued under Section 80 of the C.P.C., the plaintiffs have stated that S.V.Traders, Kancheepuram is a proprietory concern and not a partnership firm or the plaintiffs made necessary enquiries to ascertain about the sales tax dues of their vendors and inspite of their enquiries they were unable to ascertain the sales tax liability of their vendors.

34. Lord Denman, C.J. in the case of William Vs. Wilcox (1838 (3) A.D. & EI 314 (331) stated as follows:

> "It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegation".

If Exs.A-3, A-7 and the pleadings in the plaint are considered in the light of the above said observation of Lord Denman, C.J., we have to point out that when it is sought to be proved by the plaintiffs that S.V.Traders, Kancheepuram was not a partnership firm but it was only a proprietory concern and the plaintiffs claim to be bonafide purchasers and without notice the factual foundation for the same or otherwise the primary facts which must be proved at the trial should have been set out in Exs.A-3 and A-7 and pleaded in the plaint but the plaintiffs have miserably failed to do so. It is settled law that any amount of oral evidence in the absence of pleadings cannot be looked into.

35. The learned counsel for the second respondent relied upon the following decisions viz.:-

(i) In A.I.R. 1928 Patna 587 (referred to supra), the Division Bench of the Patna High Court has held as follows:-

> "If the defendants wished to avail themselves of the defence that they were purchasers for value without notice, they should have pleaded it".

In the said decision, it is further observed that the defence of a purchase without notice is one which ought to be specifically alleged as well as proved by one who relies upon it.

(ii) In A.I.R.1939 Nagpur 132 (referred to supra) it has been laid down as follows:-

> "Whether the matter falls squarely within Section 100 or whether it comes under a more general rule of law, the burden is on the transferee to establish that he is the bonafide transferee for value without notice."

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(iii) In A.I.R. 1940 Nagpur 163 (referred to supra) the Division Bench affirmed the law laid down in A.I.R. 1939 Nagpur 132 (referred to supra).

On the basis of the law laid down in the above said three decisions the learned counsel for the respondents submitted that in the plaint the plaintiffs have not specifically alleged with material particulars that the plaintiffs were bonafide purchasers without notice and he further submitted that as per Section 101 of the Evidence Act, burden of proving the same is on the plaintiffs but they have not discharged that burden. The said submissions of the learned counsel merit acceptance and as pointed out already by us, the plaint does not contain the primary facts which must be proved at the trial by the plaintiffs to establish their case that they are bonafide purchasers for value without notice. In the absence of specific pleadings in the plaint the plaintiffs are precluded from letting in any oral evidence on this aspect.

36. Now we have to consider the submissions made by the learned counsel for the appellant on the basis of the following decisions:-

(i) In the decision reported in 62 Law Weekly 377 (referred to supra), while considering the question of bonafides of a subsequent purchaser in a suit for specific performance, it is observed as follows:

> "On the question whether the fifth defendant is a bona fide purchaser for value without notice, the Courts below have differed, the lower appellate Court holding that he was not. It lies upon the party seeking to defeat a prior contract for the sale of land to prove that he is a purchaser for value before judgement bona fide and without notice of the previous contract. The initial burden is upon the purchaser. It may be that very little evidence on the part of the purchaser is sufficient to discharge the onus in a particular case".

(ii) In the decision reported in A.I.R. 1934 Privy Council 68 (referred to supra), the Privy Council with reference to Section 27 of the Specific Relief Act (1 of 1877) has observed as follows:

> "...., the section lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and, in their Lordships opinion it is clearly for the transferee to establish the circumstances which, will allow him to retain the benefit of transfer which prima facie, he had no right to get. Further the subsequent transferee is the person within whose knowledge the facts as to whether he has paid and whether he had notice of the original contract lie, and the provisions of Ss.103 and 106, Evidence Act, 1872 having a bearing on the question".

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(iii) In A.I.R. 1929 Patna 300 (referred to supra) with reference to Section 27 of the Specific Relief Act, it is observed as follows:-

> "It is thus clear that the party who wants to take the advantage of the exception has to prove it. It was, therefore, incumbent upon defendants 2 and 3 to prove in the first instance that they were transferees for value and that they had paid their money in good faith and without notice of the original contract. This view is supported by the decision of this Court in Dharamdeo Singh Vs. Ram Prasad Sah (1918 (4) Patna Law Weekly 152 = 44 I.C. 470) where it was held that in a suit for specific performance of a contract if the plaintiff proves his prior contract, the burden of proving a subsequent bona fide transfer for value without notice under S. 27 (b), Specific Relief Act, lies on the party alleging it. The same view was taken by the Calcutta High Court in Hem Chander De Vs. Amiyabala (A.I.R. 1925 Calcutta 65 = 52 Calcutta 121). The learned Subordinate Judge was, therefore, right in throwing the onus upon the defendants to prove that they were transferees for value without notice of the original contract. Very little evidence on the part of the defendants of want of knowledge of the plaintiff's contract would have discharged this onus and shifted the onus on the plaintiff but in this case defendant 2 who gave his evidence does not even say on oath that he was not aware of the plaintiff's contract".

(iv) In A.I.R. 1984 Patna 277 (referred to supra), it is observed as follows:-

> "In a suit for specific performance of a contract if the plaintiff proves his prior contract, the burden of proving a subsequent bona fide transfer for value without notice lies on the party alleging it. This is the settled law but it is also well settled that very little evidence, and in certain circumstances a mere denial, regarding want of knowledge of the plaintiff's contract would discharge this onus and shift the onus upon the plaintiff".

(v) The decision reported in A.I.R. 1977 Allahabad 328 (referred to supra) deals with the scope of Section 19(b) the Specific Relief Act and Section 41 of the Transfer of Property Act, which in our considered view has no relevance to the facts of this case.

37. In our considered view the above decisions support the contention of the respondents rather than the appellant. Even as per the above decisions, the initial burden is upon the purchaser and though very little evidence on the part of the purchaser is

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sufficient to discharge the onus in a particular case. Whether,

in this case, the plaintiffs have let in any evidence to discharge the onus will be considered a little latter.

38. The learned counsel for the plaintiffs relied upon the decision of the Apex Court in Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdul Gafur Haji Hussenbhai reported in A.I.R. 1971 S.C.1201 wherein the plea raised by the purchaser that there was bonafide purchase for value was accepted. But on a thorough reading of the judgement, it could be seen that it is not helpful to the plaintiffs. The case went up to the Supreme Court on a suit initiated by the court auction purchaser and the court auction purchaser, when threatened by the municipality with a notice of distress warrant for the arrears of the municipal tax filed the suit for declaration that he was the owner of the property purchased in good faith in the court sale. The Supreme Court has thoroughly discussed the evidence adduced on both sides and the conduct of the parties to come to a conclusion that the purchaser had no notice of the charge in the property for the arrears of the municipal tax, that in spite of his best efforts to verify whether there was any tax due, he was not informed about the arrears and the municipal corporation was not active in recovering the arrears. The subject-matter of the property in that suit had vested with the official receiver, as the owner became insolvent and the official receiver sought the permission of the court to pay the tax arrears to the municipal corporation. But subsequently the receiver had stated to the court that he did not possess sufficient funds to pay the tax to the municipal corporation and sought the direction of the court. The insolvency court also gave certain directions. The Apex Court has also found from the evidence that the purchaser in fact made enquiries from the receivers about the tax for the property but the receiver did not give any intimation. Therefore, it was viewed in that case that the purchaser could not have expected that the receiver, would not have paid tax to the municipal corporation. The Apex Court considering the conduct of the parties with reference to the prudence or negligence makes the following observation:-

> "Now the circumstances which by a deeming fiction impute notice to a party are based on his wilful abstention to enquire or search, which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice. Though originating in equity this presumption of notice is now a part of our statute and we have to interpret it as such. Wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances it is the duty of a person or ordinary prudence to take. In other words it

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is an omission to do something which a

reasonable man guided by considerations which normally regulate the conduct of human affairs would do or doing something which normally a prudent and reasonable man would not do. The question of wilful abstention or gross negligence and, therefore, of constructive notice considered from this point of view is generally a question of fact or at best mixed question of fact and law depending primarily on the facts and circumstances of each case and except for cases directly falling within the three explanations, no inflexible rule can be laid down to serve as a straight-jacket covering all possible contingencies. The question one has to answer in circumstances like the present is not whether the purchaser had the means of obtaining and might with prudent caution have obtained knowledge of the charge but whether in not doing so he acted with wilful abstention or gross negligence. Being a question depending on the behaviour of a reasonably prudent man the courts have to consider it in the background of Indian conditions. Courts in India should, therefore, be careful and cautious in seeking assistance from English precedents which should not be blindly or too readily followed".

In that case a regular suit was filed by the purchaser himself and the Apex Court has thoroughly considered the entire evidence relating to the conduct of the purchaser to hold that in spite of his best efforts to find out from the receiver with regard to the tax for the property he could not get the details from the receiver and therefore he could not be blamed for the non-payment of the tax and he was protected by the proviso to Section 100 of the Transfer of Property Act 1882.

39. Whereas in this case as pointed out above it is not even pleaded by the plaintiffs that they have made any enquiry regarding the sales tax arrears of their vendors. It is pertinent to point out that the plaintiffs have not even pleaded in the plaint that they were not aware of the sales tax arrears payable by S.V.Traders, Kancheepuram and Kasthuri and Company. It is also pertinent to point out that P.W.1 in his evidence has not even stated that he was not aware of the sales tax arrears due from S.V.Traders, Kancheepuram and Kasthuri and Company, but he has only deposed that he was not aware that T.P.Narayasamy had to pay sales tax. But unfortunately no such averment has been made in the plaint and therefore this evidence of P.W.1 cannot be looked into. In this case there is absolutely no evidence on the side of the plaintiffs to discharge the initial burden. That being so the contention of the learned counsel for the appellant that the

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plaintiffs have discharged their initial burden cannot be

accepted. But on the other hand P.W.1 in his cross examination has categorically admitted that he did not enquire T.P.Narayanasamy about the sales tax arrears. Therefore, the omission on the part of the plaintiffs to enquire with their vendors regarding their sales tax arrears amounts to negligence on their part and also it will amount to wilful abstention. In this case the plaintiffs had the means of obtaining the necessary information and the plaintiffs with prudent caution might have obtained knowledge of the charge and therefore the failure on their part to make necessary enquiries with their vendors will amount to wilful abstention or gross negligence and therefore it could be held that the plaintiffs have constructive notice.

40. We have to point out that the fact that the plaintiffs marked Ex.A-46 through D.W.7 will itself show that they had knowledge about the sales tax arrears of their vendors. It is not the case of the plaintiffs anywhere that Ex.A-46 was obtained by them from their vendors or from some other source after filing of the suit. Therefore, we have to hold that the plaintiffs are not bonafide purchasers without notice.

41. Now the issue whether S.V.Traders, Kancheepuram is a partnership firm or a proprietory concern has to be considered. It is pertinent to point out that D.W.1 through whom Exs.B-1 and B-2 were marked was a last grade Government servant in the office of the Deputy Commercial Tax Officer. Similarly D.W.2 through whom Exs.B-3 and B-4 were marked was a peon in the Office of the Deputy Commercial Tax Officer, Kancheepuram. In their cross examination, D.Ws.1 and 2 have stated that T.N.Subash is the owner of S.V.Traders, Kancheepuram and much reliance has been placed on this by the Trial Court to come to the conclusion that S.V.Traders, Kancheepuram is a proprietory concern. The trial court ought not to have attached too much importance on such testimony of D.Ws.1 and 2 since both of them are Last Grade Government Servants, whose services have been utilised by the Deputy Commercial Tax Officer only for the purpose of service of Exs.B-1 to B-4 and they could not be expected to know about the constitution of S.V.Traders, Kancheepuram. The trial court has observed that there is no evidence to show that the signature in Ex.B-26 is that of T.P.Narayanasamy and on the face of it it seems to be a fraudulent one and has further observed that the signature of T.P.Narayanasamy in Exs.B-14 and B-26 differ. In this context it has to be pointed out that the signature of T.N.Subash found in Ex.B-26 has not been disputed. Similarly the submission of Ex.B-26 to the Sales Tax Department is also not disputed. But the signature of T.P.Narayanasamy alone is disputed. Even assuming for a moment that T.P.Narayanasamy had not signed in Ex.B-26, the statement contained in Ex.B-26 cannot be denied by T.N.Subash and as such the above said observations made by the trial court in respect of Ex.B-26 are erroneous. The plaintiffs themselves contended before the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench, Madras-1) that the firm S.V.Traders, Kancheepuram was a partnership concern and as evident from Ex.B-36, the tribunal has observed that the details of documentary evidence give support for

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the acceptance of the stated partnership. If Ex.B-26 is

considered in the light of the contentions put forth by the plaintiffs before the tribunal, it could be seen that Ex.B-26 is not a fradulent document as observed by the trial Court. Further we also compared the signature of T.P.Narayanasamy in Ex.B-26 with his admitted signatures in the sale deed-Ex.A-1 to satisfy as to whether the observation made by the trial court has got any basis. But we are satisfied, on a comparision of the signatures, that there is no variation between the admitted and disputed signatures and we hold that the signature in Ex.B-26 is that of T.P.Narayasamy only. Therefore, the observation of the trial court regarding Ex.B-26 is erroneous and without any basis. There is overwhelming evidence available on record to hold that S.V.Traders, Kancheepuram is not a proprietory concern but it is only a partnership firm consisting of T.P.Narayanasamy and his son T.N.Subash.

42. The Learned Single Judge after considering at length the contents of Exs.A-46, B-15, B-24, B-25, B-26, B-27 and B-36 has rightly observed that the conclusion of the trial court that S.V.Traders was proprietory concern cannot be sustained and the trial court failed to consider the material portions and the documents placed by the defendants in the form of documents. The Learned Single Judge has also rightly observed that a perusal of the pleadings of both the parties as well as the evidence clearly shows that the plaintiffs were very well aware of the sales tax arrears from 1973-74 and knowing fully well they have purchased the property from T.P.Narayanasamy. The Learned Judge on a perusal of the entire oral and documentary evidence has further held that T.P.Narayanasamy and his son T.N.Subash in order to escape from the tax liability after knowing that there was a default committed by them and a charge has been created as per Section 24 of the Act, with the fraudulent intention sold the only property in favour of the plaintiffs. Therefore, we see no reason to interfere with the findings recorded by the Learned Single Judge and we concur with the findings.

43. In the result, the Letters Patent Appeal fails and the same is dismissed. However, there will be no order as to costs. Consequently, the connected CMP is closed.

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To

1. The Subordinate Judge,
Thirupathur

+ one cc to Mr. V. Raghavachari, Advocate sr no. 43624
+ one cc to the Special Government Pleader sr no. 43282

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NM(09.10.2006)

Pre-Delivery Judgement in
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C.M.P.No.8470 of 1999

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